

# COMPENSATION ARRANGEMENTS FOR INTEREXCHANGE TRAFFIC

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## Interexchange Carrier

	MCI (provides long distance over its own facilities)	Bell Atlantic (provides long distance over its own facilities)
<b>Call is originated by a BOC Local Exchange Carrier serving urban portion of the exchange area (e.g., Bell Atlantic)</b>	<p>If call is terminated by:</p> <p>BA → MCI pays originating and terminating access charge to Bell Atlantic</p> <p>GTE→ MCI pays originating access charge to Bell Atlantic and terminating access charge to GTE</p> <p>Cox → MCI pays originating access charge to Bell Atlantic and terminating access charge to Cox</p> <p>ATT→ MCI pays originating access charge to Bell Atlantic and terminating access charge to AT&amp;T, which pays Bell Atlantic cost plus profit for one unbundled loop</p> <p>Res → MCI pays Bell Atlantic originating and terminating access charges and Reseller pays wholesale local rate for terminating line</p>	<p>If call is terminated by:</p> <p>BA → Bell Atlantic imputes originating and terminating access charges<sup>1/</sup></p> <p>GTE→ Bell Atlantic imputes originating access charge and pays terminating access charge to GTE</p> <p>Cox → Bell Atlantic imputes originating access charge and pays terminating access charge to Cox</p> <p>ATT→ Bell Atlantic imputes originating access charge and pays terminating access charge to AT&amp;T, but collects from AT&amp;T cost plus profit for one unbundled loop</p> <p>Res → Bell Atlantic imputes originating and terminating access charges and collects from Reseller wholesale local rate for terminating line</p>
<b>Call is originated by a non-BOC Local Exchange Carrier, either an incumbent or a competitive local exchange carrier (e.g., GTE or Cox)</b>	<p>If call is terminated by:</p> <p>BA → MCI pays originating access charge to GTE and terminating access charge to Bell Atlantic</p> <p>GTE→ MCI pays originating access charge and terminating access charge to GTE</p> <p>Cox → MCI pays originating access charge to GTE and terminating access charge to Cox</p> <p>ATT→ MCI pays originating access charge to GTE and terminating access charge to AT&amp;T, which pays Bell Atlantic cost plus profit for one unbundled loop</p> <p>Res → MCI pays originating access charge to GTE and terminating access charge and Reseller pays wholesale local rate for terminating line to Bell Atlantic</p>	<p>If call is terminated by:</p> <p>BA → Bell Atlantic pays originating access charge to GTE and imputes terminating access charge</p> <p>GTE→ Bell Atlantic pays originating access charge and terminating access charge to GTE</p> <p>Cox → Bell Atlantic pays originating access charge to GTE and terminating access charge to Cox</p> <p>ATT→ Bell Atlantic pays originating access charge to GTE and terminating access charge to AT&amp;T, which pays Bell Atlantic cost plus profit for one unbundled loop</p> <p>Res → Bell Atlantic pays originating access charge to GTE, imputes terminating access charge and collects from Reseller the wholesale local rate for terminating line</p>

<sup>1/</sup> Compensation arrangements are comparable for any local exchange provider that also provides interexchange services over its own facilities (e.g., Cox), except that imputation is necessary only for incumbent local exchange carriers.

	<b>MCI (provides long distance over its own facilities)</b>	<b>Bell Atlantic (provides long distance over its own facilities)</b>
<b>Call is originated by Competitive Local Exchange Carrier providing local service using its own switch and Bell Atlantic's unbundled loops (e.g. AT&amp;T)</b>	<p>If call is terminated by:</p> <p>BA → MCI pays originating access charge to AT&amp;T and terminating access charge to Bell Atlantic and AT&amp;T pays Bell Atlantic cost plus profit for one unbundled loop</p> <p>GTE→ MCI pays originating access charge to AT&amp;T and terminating access charge to GTE and AT&amp;T pays Bell Atlantic cost plus profit for one unbundled loop</p> <p>Cox → MCI pays originating access charge to AT&amp;T and terminating access charge to Cox and AT&amp;T pays Bell Atlantic cost plus profit for one unbundled loop</p> <p>ATT→ MCI pays originating access charge and terminating access charge to AT&amp;T, which pays Bell Atlantic cost plus profit for two unbundled loops</p> <p>Res → MCI pays originating access charge to AT&amp;T and terminating access charge and Reseller pays wholesale local rate for terminating line to Bell Atlantic and AT&amp;T pays cost plus profit for one unbundled loop</p>	<p>If call is terminated by:</p> <p>BA → Bell Atlantic pays originating access charge to AT&amp;T and imputes terminating access charge and AT&amp;T pays Bell Atlantic cost plus profit for one unbundled loop</p> <p>GTE→ Bell Atlantic pays originating access charge to AT&amp;T and terminating access charge to GTE and AT&amp;T pays Bell Atlantic cost plus profit for one unbundled loop</p> <p>Cox → Bell Atlantic pays originating access charge to AT&amp;T and terminating access charge to Cox and AT&amp;T pays Bell Atlantic cost plus profit for one unbundled loop</p> <p>ATT→ Bell Atlantic pays originating access charge and terminating access charge to AT&amp;T, but collects cost plus profit for two unbundled loops</p> <p>Res → Bell Atlantic pays originating access charge to AT&amp;T, imputes terminating access charge and collects wholesale local rate for terminating line from Reseller and cost plus profit for one unbundled loop from AT&amp;T</p>
<b>Call is originated by a Competitive Local Exchange Carrier providing local service by reselling Bell Atlantic's local service</b>	<p>If call is terminated by:</p> <p>BA → MCI pays originating and terminating access charge and wholesale local rate for originating line to Bell Atlantic</p> <p>GTE→ MCI pays terminating access charge to GTE and originating access charge and wholesale local rate for originating line to Bell Atlantic</p> <p>Cox → MCI pays terminating access charge to Cox and originating access charge and wholesale local rate for originating line to Bell Atlantic</p> <p>ATT→ MCI pays terminating access charge to AT&amp;T and originating access charge and wholesale local rate for originating line to Bell Atlantic and AT&amp;T pays Bell Atlantic cost plus profit for one unbundled loop</p> <p>Res → MCI pays originating and terminating access charge and Reseller pays wholesale local rate for originating and terminating lines to Bell Atlantic</p>	<p>If call is terminated by:</p> <p>BA → Bell Atlantic imputes originating and terminating access charges and collects wholesale local rate from Reseller for originating line</p> <p>GTE→ Bell Atlantic pays terminating access charge to GTE, imputes originating access charge and collects wholesale local rate from Reseller for originating line</p> <p>Cox → Bell Atlantic pays terminating access charge to Cox, imputes originating access charge and collects wholesale local rate from Reseller for originating line</p> <p>ATT→ Bell Atlantic pays terminating access charge to AT&amp;T, imputes originating access charge and collects wholesale local rate from Reseller for originating line and cost plus profit from AT&amp;T for one unbundled loop</p> <p>Res → Bell Atlantic imputes originating and terminating access charge and collects wholesale local rate for originating and terminating lines from Reseller</p>



## GLOSSARY OF ECONOMIC TERMS

*Long run* — A period of time of sufficient length that all inputs can be varied and none is fixed.

*Incremental cost* — The cost ascribable to any specified change in volume of output or service. Incremental cost is affected by the baseline mix of services; the definition of the increment; and the time frame examined.

*Forward-looking costs* — Costs based on the options available to the firm at the time they are incurred and which do not account for sunk expenditures.

*Embedded costs* — Costs that take into account expenditures made in the past.

*Long run incremental cost ("LRIC")* — The forward-looking cost of any specified change in volume of output or service in the long run. This term should be used in the context of a specific existing output or service. LRIC does not include any overheads. For instance, the cost of adding additional capacity for transport and termination to a carrier's existing capacity for that functionality can be calculated on a LRIC basis. Use of LRIC as a costing standard is appropriate when a firm must recover the additional costs associated with providing specific capacity

*Total service long run incremental cost ("TSLRIC")* — The forward-looking cost of adding an entire service to the services offered by a firm in the long run. TSLRIC includes overheads or common costs associated with the service, but does not include general overheads of the firm. For instance, the cost of providing local telephone service can be calculated on a TSLRIC basis. TSLRIC would be an appropriate costing standard when a firm is permitted to recover its reasonable forward-looking costs of providing a product or service.

*Fully distributed costs ("FDC")* — Costs calculated using a system of cost assignment in which all costs recorded in the books of account, including sunk investment and general overheads, are allocated among products and services, or combinations of categories of products and services. FDC is an embedded cost methodology. Use of FDC as a costing standard is appropriate when a firm is permitted to recover all of the costs it has incurred to provide a product or service.



## **BARGAINING INCENTIVES AND INTERCONNECTION**

Gerald W. Brock

Prepared for Cox Communications, Inc.

### **I. Introduction**

Negotiations among parties for interconnection will in general lead to more efficient arrangements than mandated uniform interconnection rules, but negotiations will create poor results if one party has greatly unequal bargaining power or if negotiations take excessive time. The incumbent LECs are in a far stronger bargaining position than their potential competitors because their current market dominance allows them to continue in business without interconnection agreements while the potential competitors need interconnection agreements in order to conduct business. The incumbent LECs have an incentive to extend the bargaining process and use their competitors' need for quick resolution as a method of securing agreement to terms advantageous to the incumbents. The FCC can improve the expected outcome of the bargaining process by adopting rules that clarify the statutory standards and narrow the range of issues to be negotiated, and by prescribing interim Bill and Keep until negotiations are complete in order to create incentives for incumbent LECs to expedite the bargaining process.

### **II. FCC Rules Are Needed to Expedite Agreement and Equalize Bargaining Power.**

The Telecommunications Act of 1996 (TCA) leaves the details of interconnection agreements to negotiations among with affected parties, with provision for binding

arbitration in case of failure to agree. Negotiations among parties will in general lead to more efficient arrangements than mandated uniform interconnection rules because the parties can take advantage of their superior knowledge of the relevant conditions and can take account of special cases and local variations in interconnection requirements.

However, the benefits of negotiation are subject to two qualifications:

- (1) There must not be greatly unequal bargaining power that would cause one party to be able to impose an unfair solution on the other party;
- (2) The negotiations must reach a conclusion relatively quickly without allowing either party to excessively prolong the negotiating process.

In general, incumbents have an advantage over entrants in bargaining for interconnection because the incumbents have less to lose from delays in reaching a conclusion. The incumbent can continue in business without an interconnection agreement, but the entrant generally cannot initiate business without an interconnection agreement. In theoretical models of bargaining, the time horizon (or discount rate) of the bargaining parties makes a great difference in the outcome. In an often cited article, Ariel Rubinstein examined the theoretical bargaining problem in a very simple case: two parties bargain over the division of a fixed sum of money. Neither receives anything until agreement is reached. Each party in turn makes an offer for the division of the money, which may be accepted by the other party (ending the game) or rejected and followed by a counteroffer. Rubinstein examined the case in which the parties incur a discount factor on the value of the money received after agreement is reached for each period in which bargaining continues. He found that the only "perfect equilibrium" result gave a

substantial bargaining advantage to the party with the least cost from delay.<sup>1</sup> That is, a party that has a high discount rate on the gains from the money received at the end of the bargaining has an incentive to accept even seemingly unfair offers from the party with the lower discount rate rather than prolong the bargaining process. The results can vary substantially from the “focal point” solution of a 50-50 split. If, for example, party 1 has a discount rate of 8 percent (a fixed sum of money is worth 92 percent of its original value if received one period later) while party 2 has a discount rate of 15 percent, and all other characteristics are identical, the predicted theoretical division of the money under the Rubinstein bargaining structure is 68 percent for party 1 and 32 percent for party 2.

The structure of interconnection arrangements is far more complex than simple bargaining over a fixed sum of money. The transactions cost literature shows that pure market contracts are difficult to reach when there is “asset specificity” and uncertainty.<sup>2</sup> In other words, if firms have to make specific investments that are only valuable so long as the agreement remains in place, and if there is uncertainty about future events so that it is necessary to modify the agreement from time to time, then pure “spot market” economic transactions do not lead to optimal results. A textbook example is the case of a coal mine and a specialized railroad leading to it. Neither party wants to make the investment in assets that are only useful when complemented by the other party’s investment unless there is a strong expectation of a mutually satisfactory adjustment of the agreement between the parties to account for unforeseen events.

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<sup>1</sup> Ariel Rubinstein, “Perfect Equilibrium in a Bargaining Model,” *Econometrica*, Vol. 50 (1982), pp. 97-109.

<sup>2</sup> Oliver E. Williamson, *Markets and Hierarchies: Analysis and Antitrust Implications* (New York: The Free Press, 1975); Oliver E. Williamson, *The Economic Institutions of Capitalism* (New York: the Free Press, 1985).



The transactions cost framework is relevant to the interconnection issue because there is considerable uncertainty about the ideal arrangements and the necessary modifications to those arrangements to account for changing business plans and advances in technology, and parties will make some specific investments based on the negotiated interconnection agreements. Because the business plan and investment of a competitor will be significantly affected by the interconnection agreement, it needs confidence that an interconnection agreement and appropriate modifications to that agreement to take account of changing circumstances can be negotiated before making the investment necessary for entry.

Christopher Weare has argued that the complexity of transactions tends to increase the power of dominant firms. According to Weare:

When achieving interoperability involves transactional complexity, a dominant firm has access to a powerful, yet subtle strategy to foreclose rivals: the refusal to cooperate. When significant technical uncertainties are present, the development of interoperability requires active coordination. . . A dominant firm, however, can simply refuse to extend the cooperation required to address these contractual hazards, thereby imposing significant transaction costs on its rivals. . . . Moreover, this threat is wholly credible because the dominant firm incurs no added costs by such actions.<sup>3</sup>

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<sup>3</sup> Christopher Weare, "Organizing Interoperability: Economic Institutions and the Development of Interoperability," in Gerald Brock and Gregory Rosston, eds. The Internet and Telecommunications Policy: Selected Papers from the 1995 Telecommunications Research Conference (Mahwah, N.J.: Lawrence Erlbaum, in press). Chapter 9.

While the arbitration proceedings specified in the Act are a useful backstop to negotiation, successful bargaining framework rules will minimize the role of arbitration. Arbitration is a costly, time-consuming, and imperfect form of dispute resolution. As Jean Tirole states:

External arbitration is likely to be costly. Outsiders may not possess the relevant information with which to formulate an efficient decision. They may have to hire experts or spend time learning about the specificities of the situation.<sup>4</sup>

FCC rules implementing the interconnection provisions of the TCA can create a framework to enhance the likelihood that the parties can reach agreement without resort to arbitration, and can narrow the range of reasonable options for the arbitrator to take if arbitration is necessary

### **III. FCC Actions Can Facilitate Negotiated Agreements**

In order to facilitate negotiated interconnection agreements, the Commission needs to:

- (1) Clarify the meaning of “mutual and reciprocal recovery” when carriers have disparate costs;
- (2) Clarify the standards for computing “a reasonable approximation of the additional costs of terminating such calls;”
- (3) Provide a negotiating framework that provides incentives for the parties to reach agreement.

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<sup>4</sup> Jean Tirole, The Theory of Industrial Organization (Cambridge, MA: The MIT Press, 1988), p. 30.

Precise matching of prices to the cost of termination requires different prices in each direction when the termination cost differs among carriers. However, abandoning the reciprocity principle greatly complicates either a bargaining process or a regulatory process for determining interconnection compensation. If reciprocity is not required, then both parties have an incentive to argue that their costs are highest. The contracts become complex and difficult to negotiate because there is no clear focal point. It is desirable to reduce the complexity of the contracts and to simplify the bargaining process. Reciprocal compensation provides a useful limit on the bargaining freedom that helps parties reach an agreement. The FCC should specify that "mutual and reciprocal recovery" of costs means equal payment in each direction per unit of maximum capacity required to terminate traffic.

A second point of clarification needed is the meaning of "additional cost". That term should be clarified to mean the forward looking long run cost of providing the additional capacity needed for terminating interconnected traffic. The Commission should expedite the bargaining process by making the definitions precise, so that the parties (and the arbitrators) know what particular standard or range of standards they should be using. Interstate access charges (based on a FDC methodology with various mark-ups and subsidy loadings, rather than on incremental cost) cannot be a basis for interconnection under the TCA.

The forward looking costs should be used because they are the true incremental costs of adding capacity. Regardless of what was paid for current plant, the cost of adding capacity for providing terminating service is the cost of adding new plant, i.e. the forward looking cost. In general, that may be either above or below the embedded cost of

plant. The capacity cost should be used as the basic standard because that is the way the costs are incurred. Assuming coincident peaks, the capacity cost approach solves the peak load pricing problem because an interconnecting carrier is effectively reserving and paying for a slice of capacity on a full time basis. So long as it is necessary for the terminating carrier to make the capacity available, it incurs the costs for termination based on expected traffic for which it prepares, not based on actual traffic. The capacity cost approach also insulates the terminating carrier from the problem of investing in excess capacity that then is not utilized by the sending carrier.

As a bargaining framework, the Commission should specify that Bill and Keep (BAK) is the default solution until the parties reach a negotiated agreement. If traffic is balanced, reciprocal compensation will cause payments in each direction to be equal with no net payment to either party, and therefore BAK will provide the same result as any other payment level. If traffic is unbalanced, the carrier with excess inbound traffic at the peak traffic flows between the carriers should have the right to recover its incremental cost of providing terminating capacity. If the terminating costs per unit of capacity for the two carriers are not equal, the relevant costs are the costs of the carrier with excess inbound traffic. So long as the incremental capacity cost of the carrier with excess inbound traffic is used as the basis for determining net payments between the carriers, no carrier will be required to terminate traffic without compensation for its cost of carrying that traffic. Carriers will not receive their expected or desired monopoly rents, but they will receive compensation for the cost they incur in order to terminate traffic.

This approach simplifies the negotiating and data collection efforts. It is unnecessary for both carriers to submit data on incremental cost. Only the carrier that

seeks net payments need submit data on incremental cost. The carrier that seeks net payments should have an obligation to present data on its own incremental capacity cost to the carrier from which it seeks net payments because of excess inbound traffic at the peak flow rate between the two carriers. That data becomes the basis for the net payments if both carriers agree, and becomes the basis for evaluation by the arbitrator if the parties fail to agree and seek outside resolution. This approach eliminates the need for the FCC to establish a specific number for the incremental cost of terminating traffic. Incremental cost is determined on a case by case basis by the parties involved or the arbitrator based on data related specifically to that case

Using BAK as the default arrangement until agreement is reached is more incentive compatible than using the current arrangements as the default until agreement is reached because it provides incentives for the LECs to develop their incremental cost data and other information needed to support a negotiated interconnection agreement. Generally, the incumbent LECs are opposed to BAK and the potential entrants are satisfied with BAK. The success of negotiations depends on good faith efforts on both sides to clarify the relevant costs and traffic patterns. The LECs are generally the ones claiming the right to net payments to them from the parties that interconnect with them. If the interim solution is more favorable to the LECs than the expected negotiated solution, then they will have an incentive to delay the development of data supporting their incremental cost claims. However, if the interim solution is less favorable to the LECs than the expected negotiated solution, they will have an incentive to speed the negotiation process. Therefore, the specification of BAK as an initial solution pending completion of negotiations provides the incentives for the party with possession of the cost data to

produce it quickly and bring the negotiations to a conclusion. If the traffic flow between the parties approaches balance, that negotiated solution may be a continuation of the interim BAK solution because net payments between the parties will disappear when the traffic is balanced.

#### **IV. Conclusions**

The previous analysis leads to the following conclusions:

- (1) Theoretical bargaining models predict that the LECs have excessive bargaining power relative to their potential competitors because of the competitors' greater urgency to conclude negotiations.
- (2) Transactions cost analysis predicts that dominant firms gain power by refusing the active cooperation necessary to achieve interoperability in complex bargaining situations.
- (3) The FCC can simplify the negotiation process and enhance the likelihood of success by clarifying the statutory standards and narrowing the range of issues to be negotiated.
- (4) The FCC can create an incentive for the incumbent LECs to expedite the bargaining process by prescribing Bill and Keep as an interim compensation mechanism pending the completion of a negotiated agreement.



## PROPOSED RULE APPENDIX

### COX COMMUNICATIONS, INC.

CC DOCKET No. 96-98

#### PART 99—COMMISSION RULES IMPLEMENTING THE TELECOMMUNICATIONS ACT OF 1996

##### **§99.1 Basis and Purpose.**

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) *Basis.* The basis for the rules contained in this part is the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of the rules in this part is to prescribe guidelines for the Commission and State Commissions to apply in implementing the Telecommunications Act of 1996.

##### **§99.2 Definitions.**

(a) *Bill and keep* — An arrangement for compensation for reciprocal transport and termination of traffic in which each carrier is compensated for the termination it provides by receiving the termination provided by the other carrier with no explicit or additional compensation paid to either carrier.

(b) *Embedded costs* — Costs that take into account expenditures made in the past.

(c) *Forward-looking costs* — Costs based on the options available to the firm at the time they are incurred and which do not account for sunk expenditures.

(d) *Fully distributed costs ("FDC")* — Costs calculated using a system of cost assignment in which all costs recorded in books of account, such as the Uniform System of Accounts, including sunk investment and general overheads, are allocated among products and services or combinations of categories of products and services. FDC is an embedded cost methodology. Use of FDC as a costing standard is appropriate when a firm is permitted to recover all the costs it has incurred to provide a product or service.

(e) *Incremental cost* — The cost ascribable to any specified change in volume of output or service. Incremental cost is affected by the baseline mix of services; the definition of the increment; and the time frame examined.



(f) *Incumbent local exchange carrier* — With respect to an area, the local exchange carrier that —

(A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and

(B) (i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's rules; or

(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

(g) *Long run* — A period of time of sufficient length that all inputs can be varied and none is fixed.

(h) *Long run incremental cost ("LRIC")* — The forward-looking cost of any specified change in volume of output or service in the long run. This term should be used in the context of a specific existing output or service. LRIC does not include any overheads. For instance, the cost of adding additional capacity for transport and termination to a carrier's existing capacity for that functionality can be calculated on a LRIC basis. Use of LRIC as a costing standard is appropriate when a firm must recover the additional costs associated with providing specific capacity.

(i) *Mutual and reciprocal recovery of costs* — an equal payment or absence of payment in each direction per unit of maximum capacity required to transport and terminate traffic or bill and keep.

(j) *Total service long run incremental cost ("TSLRIC")* — The forward-looking cost of adding an entire service to the services offered by a firm in the long run. TSLRIC includes overheads or common costs associated with the service, but does not include general overheads of the firm. For instance, the cost of providing local telephone service can be calculated on a TSLRIC basis. TSLRIC would be an appropriate costing standard when a firm is permitted to recover its reasonable forward-looking costs of providing a product or service.

### **§99.3 Local exchange carrier allowable cost standards.**

(a) *Costs recognized in mutual and reciprocal transport and termination.* State Commissions and the FCC (in the instance of a state's failure to act) must apply allowable cost standards in determining allowable local exchange carrier costs for reciprocal transport and termination. State Commissions and the FCC may permit a local exchange carrier to demonstrate its costs for mutual and reciprocal transport and termination. A State Commission or FCC determination shall comply with this subsection if the compensation

allowed falls within the range from bill and keep to long run incremental cost. Any determination under this subsection shall provide for the mutual and reciprocal recovery of costs without the addition of separate charges for the network interconnections required to mutually exchange traffic for transport and termination.

*(b) Costs recognized in unbundled elements and interconnection for unbundled elements.* State Commissions and the FCC (in the instance of a state's failure to act) must apply allowable cost standards in determining allowable incumbent local exchange carrier costs for unbundled elements and interconnection associated with providing unbundled elements. State Commissions and the FCC may permit an incumbent local exchange carrier to demonstrate its costs for unbundled elements and interconnection. A State Commission or FCC determination shall comply with this subsection if the compensation allowed falls within the range from total service long run incremental cost to fully distributed costs (allowing recovery of some or all embedded costs as reflected in the Uniform System of Accounts for incumbent local exchange carriers) of the service, as allocated to the individual elements and interconnection.

*(c) Effect of failure of incumbent LEC to provide adequate cost data on allowable costs.* Both State commissions and the FCC may apply a proxy for incumbent local exchange carrier costs if they determine that the incumbent local exchange carrier has failed timely to provide adequate or reliable cost data in support of its proposed costs. The proxy for mutual and reciprocal transport and termination under Section 252(d)(2) is bill and keep.

*(d) Use of interim arrangements for reciprocal transport and termination.* State Commissions and the FCC (in the instance of a state's failure to act) are permitted to establish interim arrangements for the exchange of traffic pending the establishment of permanent arrangements, negotiation, arbitration and litigation. In order to provide an orderly transition from an interim to a permanent arrangement, the State Commission or the FCC is required to issue a final determination on permanent arrangements prior to termination of any interim arrangements.

#### **§99.4 Technical standards**

*(a) Technical standards for reciprocal transport and termination.* A telecommunications carrier's request to a local exchange carrier for transport and termination shall be presumed reasonable if the telecommunications carrier requests a mid-span meet or any technical arrangement used by the local exchange carrier at any time within the 24 months preceding the start of negotiations.

*(b) Additional requirements on incumbent LECs.* Incumbent local exchange carriers must provide interconnection for the purchase of unbundled elements and for the reciprocal transport and termination of traffic at any technically feasible point within their networks. In determining technical feasibility, State Commissions and the FCC (in the instance of a state's

failure to act) shall presume that at a minimum, incumbent local exchange carriers can connect on any technical terms in place within 24 months preceding the start of negotiations. An incumbent local exchange carrier must offer interconnection at any point in its network where it allows interconnection to itself, its affiliates, or other carriers. If there is a dispute regarding the technical feasibility of a particular proposed arrangement, the burden is on the incumbent local exchange carrier to prove the technical infeasibility of a proposal.

#### **§99.5 Enforcement of market opening requirements**

*(a) Enforcement of incumbent LEC obligations.* Both State Commissions and the FCC may enforce the provisions of Section 251 and 252. State Commissions may enforce Sections 251 and 252 consistent with these rules and subject to FCC review pursuant to Sections 253 and 251(d)(3). In addition, State Commissions can order specific performance of the terms and conditions of Section 252 agreements. In addition to retaining authority to order forfeitures and Section 208 damages for rule violations, the FCC shall consider a Bell Operating Company's failure to negotiate in good faith in evaluating the Bell Operating Company's petition for interLATA authority under Section 271.

*(b) Barriers to local telephone competition.* (1) States may not impose substantive requirements on local exchange carriers and telecommunications carriers that specify a required size of market to be served or designate specific customers to be served. The FCC may specify additional policies on a case-by-case basis.

(2) No local government shall impose any requirement for approval or certification to offer service on any local exchange carrier or telecommunications carrier. No local franchise requirement shall act as a bar to the provision of any telecommunications service by a local exchange carrier or a telecommunications carrier.

(3) Nothing in this subsection affects the right of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, provided that:

(i) any State or local requirement shall be applied on a competitively neutral and nondiscriminatory basis; and

(ii) any compensation required for the use of public rights-of-way shall be publicly disclosed by the government that receives the compensation in a manner that permits the public and affected telecommunications providers to determine the amounts paid by each telecommunications provider and the basis on which the required compensation is determined.